

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

LAWRENCE D. HOLLIDAY, #291156

Petitioner,

v.

2:08CV162

COMMONWEALTH OF VIRGINIA,

Respondent.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter was initiated by petition for writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia.

I. STATEMENT OF THE CASE

A. Background

On April 3, 2008, petitioner filed a "Motion For Relief From Judgment under (Rule 60(b)),," which the Court construed as a petition for writ of habeas corpus. The submission was not filed on the set of standardized forms required to file § 2254 petitions, and it was not accompanied by either the required filing fee or an application to proceed in forma pauperis.

By order of April 14, 2008, petitioner was directed to (1) file an amended petition on the appropriate forms and (2) to submit either the required filing fee or an application to proceed in forma pauperis. Petitioner was advised that while his submission did not state the date of the conviction for which he was challenging, the claims raised are identical to the claims raised in a previous petition (2:03CV510). The previous petition challenged petitioner's conviction

on October 31, 2000, in the Circuit Court for the City of Richmond, Virginia, and was dismissed pursuant to the statute of limitations. Petitioner was advised that if he is challenging the same conviction in the present petition, his efforts would be futile, since the previous petition was barred by the statute of limitations.

On May 6, 2008, petitioner filed a "Motion For Leave to Withdraw (Title 28 U.S.C. 60(b))." The motion states that "[m]ovant believes he has cause and merit, but needs further evalvation [sic] and is not mature enough at this stage to pursue. Movant is a layman to the rules of law and do [sic] not wish to tied [sic] up the courts in pursue [sic] of his case." In light of petitioner's motion to withdraw, the Court sees no reason to require respondent to answer the petition.

III. RECOMMENDATION

For the foregoing reasons, the Court recommends that petitioner's petition for writ of habeas corpus be DISMISSED, with prejudice. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, it is recommended that the Court decline to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

IV. REVIEW PROCEDURE

By copy of this Report and Recommendation, the parties are notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within ten days from the date of mailing of this report to the objecting party, computed pursuant to Rule 6(a) of the Federal Rules of Civil

Procedure, plus three days permitted by Rule 6(e) of said rules. See 28 U.S.C. § 636(b)(1)(C)(2000); FED.R.CIV.P. 72(b). A party may respond to another party's objections within ten days after being served with a copy thereof.

2. A district judge shall make a de novo determination of those portions of this report or specified findings or recommendations to which objection is made.

The parties are further notified that failure to file timely objections to the findings and recommendations set forth above will result in waiver of right to appeal from a judgment of this court based on such findings and recommendations. See Thomas v. Arn, 474 U.S. 140 (1985); Carr v. Hutto, 737 F.2d 433 (4th Cir. 1984); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

/s/

James E. Bradberry
United States Magistrate Judge

Norfolk, Virginia

May 8, 2008

Clerk's Mailing Certificate

A copy of the foregoing Report was mailed this date to each of the following:

Lawrence Delma Holliday , #291156, pro se
Powhatan Correction Center
State Farm, VA 23160

Fernando Galindo, Clerk

By _____
Deputy Clerk

_____, 2008